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Paper No. 7

CANTOR COLBURN, LLP
20 CHURCH STREET
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HARTFORD, CT 06103

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Technology Center 360

In re Application of
Jean-Claude Percheron, et al.
Application No. 09/744,600
Filed: January 26, 2001
Attorney Docket No. PLS-0012

DECISION ON PETITION

This is a decision on the petition, filed November 13, 2002, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must so notify the Office.

This application was held abandoned for failure to timely respond to the Office action of February 27, 2002, which set a thirty day(s) or one (1) month shortened statutory period for reply. Accordingly, a reply was due on or before March 27, 2002.

Petitioner states that a timely reply was mailed via certificate of mailing on March 27, 2002, which included the following papers: Response with amendment. Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing dated March 27, 2002, which would have rendered the reply timely if received.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of February 27, 2002 is hereby withdrawn and the application restored to pending status.

In view of the above the petition is **GRANTED**.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

The copy of the reply received with the petition will be accepted in place of the reply shown to have been mailed (or transmitted by facsimile) on November 13, 2002.

This application is being referred to Technology Center AU 3677 for appropriate action in the normal course of business on the reply received with petition.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

cc: DANIEL F. DREXLER
CANTON COLBURN, LLP
55 GRIFFIN ROAD SOUTH
BLOOMFIELD, CT 06002

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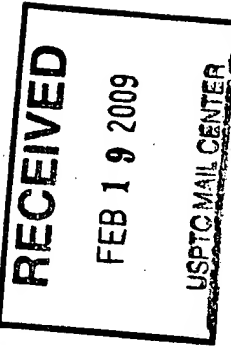
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BLOOMFIELD, CT 06002

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